

BOARD OF APPEALS CASE NO. 5258

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BEFORE THE

APPLICANTS: Dallam Family Partnership

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ZONING HEARING EXAMINER

**REQUEST: Variances to create a lot with 10 feet
of road frontage on a 10 foot panhandle in the
AG District; 1818 S. Fountain Green Road, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

HEARING DATE: June 24, 2002

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Aegis: 5/8/02 & 5/15/02

Record: 5/10/02 & 5/17/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Dallam Family Limited Partnership, is requesting a variance, pursuant to Section 267-22C, of the Harford County Code, to create a lot with less than 25 feet of road frontage, and a variance pursuant to Section to 267-22G(4)(a), to create a lot with less than a 25 foot wide panhandle in an Agricultural District.

The subject parcel is located at 1818 S. Fountain Green Road, Bel Air, Maryland 21014, in the First Election District, and is more particularly identified on Tax Map 57, Grid 1B, Parcel 269. The total parcel contains approximately 116.814 acres, and the proposed lot will contain 2.0 acres.

The contract purchaser of the property, Ariel Dallam Taxdal, appeared and testified that she is a limited partner of the Applicant, Dallam Family Limited Partnership. The Partnership is the owner of the subject property. Ms. Taxdal testified that she is familiar with the Department of Planning and Zoning's Staff Report, and that she has no additions or corrections to the information contained in that document. The witness also testified that she has no objection to any of the three conditions for approval recommended in the Staff Report.

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The witness described the subject property as an actively farmed 116 acre parcel, with agricultural zoning. The development rights for the larger parcel have been sold to Harford County, and the property is subject to a deed of easement under the County's Agricultural Land Preservation Program. Pursuant to the terms of that agreement, the Partnership is permitted to create a building lot of two acres or less, for the residential use of the child of the prior owner, Hope Harlan Dallam. The witness testified that she is the daughter of Hope Harlan Dallam. Approval to create the proposed two-acre lot has been obtained from Harford County.

The witness introduced a revised site plan (Applicant's Exhibit 1), showing both the entire parcel, and the proposed lot. She testified that there are other structures located on the property which are not depicted on the site plan, including two houses, a barn and a shed. The property also contains fields, which are either actively farmed, or used for livestock. Part of the property is utilized as a dairy farm.

Ms. Taxdal testified that the proposed panhandle lot will be located on the northern edge of the subject property. A secondary means of access to Route 543 will be provided via a 12 foot perpetual private right-of-way over an existing farm lane. The location of the proposed lot was selected so as to have as little impact as possible on the farmed portion of the subject parcel. Placing the lot in any other location on the property would result in the disturbance of valuable cropland. The witness further testified that if the panhandle were 25 feet wide, as required by the Code, she would have less room on her lot for well and septic, because of the two acre lot size limitation.

The witness indicated that, in her opinion, the granting of the requested variance will have no adverse impact on neighboring properties. The subject parcel is owned entirely by the family partnership, and the homes located around the proposed lot belong to her siblings. In addition, the lot is surrounded by woods on three sides and cannot be seen from Maryland Route 543.

Mr. Moe Davenport, from the Harford County Department of Planning and Zoning, appeared and testified that the Department recommended approval of the requested variances in its May 31, 2002 Staff Report. He also testified that the alternate 12 foot access easement will be located on top of an existing farm lane, and that no additional drive will be created.

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No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicant, Dallam Family Limited Partnership, is requesting a variance, pursuant to Section 267-22C, of the Harford County Code, to create a lot with less than 25 foot of road frontage (10 foot proposed), and a variance pursuant to Section 267-22G(4)(a) of the Harford County Code to create a lot with less than 25 foot wide panhandle (10 foot proposed) in an Agricultural District.

Section 267-22C of the Harford County Code provides:

“Lot frontage requirements. Any building, structure or use frontage on a public road shall be located on a lot abutting the road for at least twenty-five (25) feet, except as otherwise required by this Part 1. In attached dwelling projects, provided that all buildings are so located to provide access for servicing, fire protection and off-street parking, lots may front on open space, courts or group parking areas, and each such attached dwelling unit shall not be required to meet the road frontage standard.”

Section 267-22G of the Harford County Code provides:

Panhandle-lot requirements. Panhandle lots shall be permitted for agricultural and residential uses, to achieve better use of irregularly shaped parcels, to avoid development in areas with environmentally sensitive features or to minimize access to collector or arterial road, subject to the following requirements:

- (4) Groups not exceeding four (4) lots may have two (2) lots on panhandles in accordance with the following criteria. Panhandle lots and subdivisions shall have, as a minimum, the following width.
 - (a) Single panhandles: twenty-five (25) feet.

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Section 267-11 of the Harford County Code allows the granting of variances stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”**

The Maryland Court of Special Appeals established the following two-part test for determining whether a variance should be granted. First, it must be determined whether the property for which the variance is being requested is unique. In order for a lot to be unique, there must be a peculiar characteristic or unusual circumstance, relating only to the subject parcel, which causes the zoning ordinance to impact more severely on that property than on surrounding lots. If it is determined that the subject property is unique, the hearing examiner may proceed to the second prong of the test. The second prong involves a determination as to whether strict enforcement of the zoning ordinance would result in practical difficulty or unreasonable hardship to the property owner. Cromwell v. Ward, 102 Md. App. 691, 721 (1995).

The Hearing Examiner finds that the subject property is unique. The parcel is subject to a deed of easement dated May 14, 1994, under Harford County’s Agricultural Land Preservation Program. Pursuant to the terms of that easement, the right to subdivide the property is limited to the creation of a single building lot, of two acres or less, which may be created only for the residential use of a child of the property’s previous property owner, Hope Harlan Dallam. The Applicant, Ariel Dallam Taxdal, is the daughter of Hope Harlan Dallam. The proposed lot will be her residential use. Harford County has granted approval for the creation of the proposed lot. Thus, the first element of the Cromwell test has been met.

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The Hearing Examiner finds that the denial of the requested variances would create a practical difficulty for the Applicant. The property fronts on Maryland Route 543, which is a heavily traveled road. In order to locate the proposed lot a desirable distance from that road, and still stay within the maximum two-acre lot size limitation set forth in the Agricultural Land Preservation Program easement, the lot frontage needs to be reduced to the proposed 10 foot width. If the panhandle were wider than 10 feet, there would be less space on the proposed lot for the location of well and septic.

The Hearing Examiner also finds that the granting of the requested variances would neither be substantially detrimental to adjacent properties, nor materially impair the purpose of the Code or the public interest. The proposed lot has been placed on the subject property in such a way as to minimize disturbance to cropland on that actively farmed property. The proposed lot is not visible from Route 543, and it will be surrounded by woods on three sides. Finally, all of the adjoining property owners are siblings of the contract purchaser, Ariel Dallam Taxdal.

The Hearing Examiner recommends approval of the Applicant's request, subject to the following conditions:

1. The Applicant shall submit a detailed preliminary plan to be reviewed and approved by the Department of Planning and Zoning.
2. The Applicant shall submit a final plat to the Department of Planning and Zoning for approval and recordation.
3. A common drive agreement shall be submitted with the final plat for access through the 12-foot easement for ingress and egress to the proposed lot.

Date JULY 23, 2002

Rebecca A. Bryant
Zoning Hearing Examiner